



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2017-0279; FRL-9985-30-Region 5]

**Approval and Promulgation of Air Quality Implementation Plans;
Wisconsin; VOC Definition Update and Removal of Obsolete
Gasoline Vapor Recovery Regulations**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a request submitted by the Wisconsin Department of Natural Resources (WDNR) on May 16, 2017, to revise the Wisconsin State Implementation Plan (SIP). The submission includes amendments to the Wisconsin Administrative Code updating the definition of "volatile organic compound (VOC)" to add eight compounds to the list of exempt compounds. In addition, WDNR is also requesting the withdrawal of several previously approved provisions of the Wisconsin Administrative Code from the SIP concerning the State's Stage II vapor recovery (Stage II) program that terminated in 2012. EPA approved the removal of the Stage II program as a component of the Wisconsin SIP in 2013, including the approval of a demonstration under section 110(l) of the Clean Air Act (CAA) that addressed emissions impacts associated

with the removal of the program. EPA proposed to approve the State's submittal on May 25, 2018.

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2017-0279. All documents in the docket are listed in the <http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through <http://www.regulations.gov>, or please contact the person identified in the "For Further Information Contact" section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo, Mobile Source Program Manager, Control Strategies Section, Air Programs Branch (AR 18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312)886-6061, acevedo.francisco@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we", "us" or "our" is used, we mean EPA.

I. What is being addressed by this document?

On May 25, 2018, at 83 FR 24267, EPA proposed to approve a revision to the Wisconsin SIP that updates the definition of VOC at Wisconsin Administrative Code Chapter NR 400.02(162) to add the following compounds to the list of exclusions at NR 400.02(162): Trans-1,3,3,3-tetrafluoropropene (HFO-1234ze), $\text{HCF}_2\text{OCF}_2\text{H}$ (HFE-134), $\text{HCF}_2\text{OCF}_2\text{OCF}_2\text{H}$ (HFE-236cal2), $\text{HCF}_2\text{OCF}_2\text{CF}_2\text{OCF}_2\text{H}$ (HFE-338pcc13), $\text{HCF}_2\text{OCF}_2\text{OCF}_2\text{CF}_2\text{OCF}_2\text{H}$ (H-Galaden 1040X or H-Galden ZT 130 (or 150 or 180), Trans-1-chloro-3,3,3-trifluoroprop-1-ene (SolsticeTM 1233zd(E)), 2,3,3,3-tetrafluoropropene (HFO-1234yf), and 2-amino-2-methyl-1-propanol (AMP; CAS number 124-68-5). Wisconsin took this action based on EPA's 2012, 2013, and 2014 rulemakings in which EPA determined that these compounds have a negligible contribution to tropospheric ozone formation and thus should be excluded from the definition of VOC codified at 40 CFR 51.100(s). See 77 FR 37610 (June 22, 2012); 78 FR 9823 (February 12, 2013); 78 FR 62451 (October 22, 2013); 78 FR 53029 (August 28, 2013); and 79 FR 17037 (March 27, 2014). This action also approves minor stylistic edits for clarity in NR 420.02(39), NR 420.03(4)(b)3, NR 420.04(1)(b)4, and NR 420.04(3)(c)1.

EPA is also approving the withdrawal of several remaining provisions from the Wisconsin SIP that are related to the Stage II vapor recovery program that was terminated by Wisconsin in 2012. Wisconsin originally submitted a SIP revision to EPA on

November 18, 1992, to satisfy the requirement of section 182(b)(3) of the CAA. The revision applied to Kenosha, Kewanee, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Washington and Waukesha counties, and was incorporated into the WDNR's 1993-94 ozone 15% Control Plan. EPA fully approved Wisconsin's Stage II program on August 13, 1993 (53 FR 43080), including the program's legal authority and administrative requirements found in Section 285.31 of the Wisconsin Statutes and Chapter NR 420.045 of the Wisconsin Administrative Code.

On November 12, 2012, WDNR submitted a SIP revision requesting the removal of Stage II requirements under NR 420.045 of the Wisconsin Administrative Code from the Wisconsin SIP. To support the removal of the Stage II requirements, the revision included a section 110(l) demonstration addressing the emissions impacts associated with the removal of the program. On November 4, 2013 (78 FR 65875), EPA approved the removal of the Stage II requirements under NR 420.045 of the Wisconsin Administrative Code from the Wisconsin SIP. In this action EPA approves the removal of the residual Stage II provisions that remained in place after the program was decommissioned. These provisions are NR 420.02(8m), 420.02(26), 420.02(32), 420.02(38m), NR 425.035, NR 439.06(3)(i), NR 484.05(4), NR 484.05(5), and NR 494.04.

II. What comments did we receive on the proposed SIP revision?

Our May 25, 2018 proposed rule provided a 30-day review and comment period. The comment period closed on June 25, 2018. EPA received one comment during the public comment period, but the comment was completely outside of the scope of this approval and, therefore, is not being addressed as part of this final action.

III. What action is EPA taking?

EPA is approving the revision to the Wisconsin SIP submitted by WDNR on May 16, 2017, because the revision is consistent with EPA's prior actions revising the definition of VOC. In addition, the removal of remaining Stage II program provisions from the SIP meets all applicable requirements, and will not interfere with reasonable further progress or attainment of any of the national ambient air quality standards.

IV. Incorporation by Reference.

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Wisconsin Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through www.regulations.gov and at the EPA Region 5 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more

information).

V. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory

Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those

areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within

which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations,
Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: September 19, 2018.

Cathy Stepp,
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 52.2570 is amended by revising paragraphs (c) (69) (i) (A) through (C), (c) (69) (i) (E), (c) (73) (i) (C), and (c) (73) (i) (H) through (J), and by adding paragraph (c) (138) to read as follows:

§ 52.2570 Identification of plan.

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(i) * * *

(A) Wisconsin Administrative Code, Chapter NR 420 Control of Organic Compound Emissions from Petroleum and Gasoline Sources; Section 420.02 Definitions, Sections NR 420.02(8m), (24m), (32m), (38m), (39m); Section NR 420.045 Motor Vehicle Refueling; published in Wisc. Admin. Code in January 1993, and took effect on February 1, 1993. Section NR 420.045 was rescinded in 2013 and is removed without replacement; see paragraph (c) (129) of this section. Sections NR 420.02(8m) and NR 420.02(38m) were rescinded in 2016 and are removed without replacement; see paragraph (c) (138) of this section.

(B) Wisconsin Administrative Code, Chapter NR 425 Compliance Schedules, Exceptions, Registration and Deferrals for Organic Compound Emissions Sources in Chapters 419 to 424; Section 425.035 Throughput Reporting and Compliance Schedules for Motor Vehicle Refueling; published in Wisc. Admin. Code in January 1993, and took effect on February 1, 1993. Section NR 425.035 was rescinded in 2016 and is removed without replacement; see paragraph (c)(138) of this section.

(C) Wisconsin Administrative Code, Chapter NR 439 Reporting, Recordkeeping, Testing, Inspection and Determination of Compliance Requirements; Section NR 439.06(3)(c); Section NR 439.06(3)(i); published in the Wisc. Admin. Code in January 1993, and took effect on February 1, 1993. Section NR 439.06(3)(i) was rescinded in 2016 and is removed without replacement; see paragraph (c)(138) of this section.

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(E) Wisconsin Administrative Code, Chapter NR 494 Enforcement and Penalties for Violation of Air Pollution Control Provisions; renumbered Sections NR 494.025 and 494.03 to NR 494.03 and 494.05; Section NR 494.04 Tagging Gasoline Dispensing Equipment; published in the Wisc. Admin. Code in January 1993 and took effect on February 1, 1993. Section NR 494.04 was rescinded in 2016 and is removed without replacement; see paragraph (c)(138) of this section.

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(C) Chapter NR 420: CONTROL OF ORGANIC COMPOUND EMISSIONS FROM PETROLEUM AND GASOLINE SOURCES. NR 420.01 as published in the (Wisconsin) Register, February, 1990, No. 410, effective March, 1, 1990. NR 420.02 and 420.045 as published in the (Wisconsin) Register, January, 1993, No. 445, effective February 1, 1993. NR 420.03 and 420.04 as published in the (Wisconsin) Register, December, 1993, No. 456, effective January 1, 1994. NR 420.05 as published in the (Wisconsin) Register, May, 1992, No. 437, effective June 1, 1992. Section NR 420.045 was rescinded in 2013 and is removed without replacement; see paragraph (c)(129) of this section. Sections NR 420.02(8m), (26), (32), and (38m) were rescinded in 2016 and are removed without replacement; see paragraph (c)(138) of this section.

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(H) Chapter NR 425: COMPLIANCE SCHEDULES, EXCEPTIONS, REGISTRATION AND DEFERRALS FOR ORGANIC COMPOUND EMISSION SOURCES IN CHS. NR 419 TO 424. NR 425.01 and 425.02 as published in the (Wisconsin) Register, February, 1990, No. 410, effective March 1, 1990. NR 425.03 425.04 and 425.05 as published in the (Wisconsin) Register, December, 1993, No. 456, effective January 1, 1994. NR 425.035 as published in the (Wisconsin) Register,

January, 1993, No. 445, effective February 1, 1993. Section NR 425.035 was rescinded in 2016 and is removed without replacement; see paragraph (c)(138) of this section.

(I) Chapter NR 439: REPORTING, RECORDKEEPING, TESTING, INSPECTION AND DETERMINATION OF COMPLIANCE REQUIREMENTS. NR 439.01 and 439.085 as published in the (Wisconsin) Register, May, 1992, No. 437, effective June 1, 1992. NR 439.02, 439.03, 439.04, 439.05, 439.055, 439.06, 439.07, 439.075, 439.09, 439.095 and 439.11 as published in the (Wisconsin) Register, December, 1993, No. 456, effective January 1, 1994. NR 439.08 as published in the (Wisconsin) Register, May, 1993, No. 449, effective June 1, 1993. NR 439.10 as published in the (Wisconsin) Register, September, 1987, No. 381, effective October 1, 1987. Section NR 439.06(3)(i) was rescinded in 2016 and is removed without replacement; see paragraph (c)(138) of this section.

(J) Chapter NR 484: INCORPORATION BY REFERENCE. NR 484.01 as published in the (Wisconsin) Register, May, 1992, No. 437, effective June 1, 1992. NR 484.02 as published in the (Wisconsin) Register, September, 1986, No. 369, effective October 1, 1986. NR 484.03 as published in the (Wisconsin) Register, May, 1993, No. 449, effective June 1, 1993. NR 484.04, 484.05 and 484.06 as published in the (Wisconsin) Register, December, 1993, No. 456, effective January 1, 1994.

NR 484.08 and 484.09 as published in the (Wisconsin) Register, October, 1992, No. 442, effective November 1, 1992. Section NR 484.04(3) was repealed in 2011 and is removed without replacement; see paragraph (c)(130) of this section. Sections NR 484.05(4) and NR 484.04(5) were rescinded in 2016 and are removed without replacement; see paragraph (c)(138) of this section.

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(138) On May 16, 2017, the Wisconsin Department of Natural Resources submitted a request to remove, from the Wisconsin ozone State Implementation Plan, residual Stage II vapor recovery program provisions that remained in place after the program was decommissioned. The request also updates the definition of VOC at Wisconsin Administrative Code Chapter NR 400.02(162) to add the following compounds to the list of excluded compounds at NR 400.02(162): Trans-1,3,3,3-tetrafluoropropene (HFO-1234ze), HCF2OCF2H (HFE-134), HCF2OCF2OCF2H (HFE-236cal2), HCF2OCF2CF2OCF2H (HFE-338pcc13), HCF2OCF2OCF2CF2OCF2H (H-Galaden 1040X or H-Galden ZT 130 (or 150 or 180), Trans-1-chloro-3,3,3-trifluoroprop-1-ene (SolsticeTM 1233zd(E)), 2,3,3,3-tetrafluoropropene (HFO-1234yf), and 2-amino-2-methyl-1-propanol (AMP; CAS number 124-68-5). The request also includes minor amendments that contain minor stylistic edits for clarity.

(i) *Incorporation by reference.* NR 400.02(162), NR 420.02(39), NR 420.03(4)(b)3, NR 420.04(1)(b)4, and NR 420.04(3)(c)1 as published in the Wisconsin Register, July 2016, No. 727, effective August 1, 2016.

(ii) *Additional material.* Wisconsin Natural Resources Board January 27, 2016, Board Order AM-15-14 to repeal NR 420.02 (8m), (26), (32), and (38m), 425.035, 439.06 (3) (i), 484.05 (4) and (5), and 494.04; as published in the Wisconsin Register July 2016, No. 727, effective August 1, 2016.

[FR Doc. 2018-23244 Filed: 10/24/2018 8:45 am; Publication Date: 10/25/2018]